

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5338 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIKHABHAI BHANABHAI KADIA

Versus

GUJARAT HOUSING BOARD

Appearance:

MR JIVANLAL G SHAH for Petitioner
MRS KETTY A MEHTA for Respondent No. 1
None present for Respondent No. 2, 4, 5
MR KC PANWALA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/03/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. The dispute pertains to the allotment of house No.34/250 situated in Gujarat Housing Board Colony at Khatodra, District Surat, which gave rise to the filing of this petition by the petitioner before this Court.

2. It is not necessary to give out all the detailed facts of this case. Only few relevant facts are to be taken for the disposal of this Special Civil Application.

3. The counsel for the respondent, Housing Board, contended that in view of the resolution of the Board No.356/91 dated 16-4-1991, this Special Civil Application has become infructuous. That resolution reads as under:

Regarding staff quarter allotted to the retired employee of the Board, Shri Bhikhabhai Bhanabhai Kadia.

Resolution No.356 of 1991.

After considering the above subject, the Board resolves to take the following action:

(A) To evict Smt. Kusumben Bhandari from house no. 34/250 of the colony in Khatodara area of Surat which is allotted to her on hire purchase basis and instead thereof, she be allotted another available house and to decide the price of the said house in accordance with Rules and Regulations of the Board.

(B) After getting back the house no.34/250 of Khatodara colony from Smt. Kusumben Bhandari, to allot the said house to Shri Bhikhabhai Bhanabhai Kadia on hire purchase/sale basis after determining the price in accordance with Rules and Regulations of the Board after he unconditionally withdraws Special Civil Application No.5338 of 1986 filed in the Hon'ble High Court against the Board.

(C) The Board has recovered the possession of house No.47/570 of Satyanagar colony in October, 1988 which was allotted to Shri Bhikhabhai Bhanabhai Kadia as a staff quarter as the employee of the Board. After retirement of Shri Bhikhabhai Bhanabhai Kadia, instead of recovery of arrears of economic rent, recovery of rent which is determined of this colony be recovered.

Unanimously passed.

So the Housing Board has taken the decision to allot the house No.34/250 in favour of the petitioner after eviction of respondent No.3 therefrom.

4. The respondent No.3 filed a Civil suit No.211/91 in the Court of Civil Judge, (J.D.), Surat, against this decision of the Board and she has been protected by the Court by grant of interim relief. The petitioner filed an application in the said suit under Order 1 Rule 10 C.P.C. for impleading him as a party, but the said application came to be dismissed by the Civil court under its order dated 21st October, 1991.

5. The petitioner filed the Civil Revision Application No.142/92 before this Court, which came to be decided under the order dated 5th April, 1995. The order of the Trial Court has been set aside by this Court and the application filed by the petitioner was granted and he was directed to be impleaded as party-defendant at his own costs. The Court while deciding the revision application has taken a note of the filing of this Special Civil Application before this Court. The petitioner has given undertaking before this Court in the Civil Revision Application that as soon as the possession of the house is given to him, he will withdraw this Special Civil Application. The Court has given the direction that hearing of regular Civil Suit No.211/93 pending before the Court of 2nd Lt. Civil Judge, (S.D.) is expedited and the Court was directed to decide the same preferably by 13th June, 1996.

6. In view of the resolution of the Board dated 16th April, 1991, this Special Civil Application, no more survives. The Board has already passed the order of allotment of the House No.34/250 in favour of the petitioner which was the prayer of the petitioner in this Special Civil Application. Another prayer was made to get the house evicted from respondent No.3, which now no more survives, as the respondent No.3 is continuing in possession of the house, as the Civil court has granted interim relief in her favour. The petitioner has already been impleaded as defendant in the suit filed by the respondent No.3, and as such, that is the only appropriate forum where the inter-se rights of the petitioner and respondent No.3 can be adjudicated and decided.

7. The counsel for the petitioner also does not dispute this position and he very frankly submitted that the petitioner will agitate all his rights in the civil suit, but he stated that though this Court has given the direction to the Civil Judge, but the matter has not been decided so far. On putting a question by the Court, the counsel for the petitioner has given out that as the Presiding Officer in the Court where the suit is pending,

was not available, the matter could not have been decided. However, if it is so, then the proper course would have been for the petitioner to approach to the District Judge, Surat, for transfer of this suit to another Court where the Presiding Officer is available. The Trial Court has to comply with the order of this Court given in revision application filed by the petitioner before this Court and the suit should have been decided within the time as granted by this Court.

8. However, this writ petition does not survive. The contention of the petitioner that the suit is not likely to be decided for years together, is taken care of and it is hereby ordered that the direction given by this Court in Civil Revision Application No.142/92 on 5th April, 1995, to the 2nd Jt. Civil Judge, (S.D.), Surat, to decide the Regular Civil Suit No.211/91 by 30th June, 1996, has to be carried out and the suit aforesaid be decided preferably by 31st July, 1997. In case, the Presiding Officer in the said court is not available, then it is for the District Judge to see that the direction of the Court as contained in the order dated 5th April, 1995 and this direction are complied with. The office is directed to send a copy of this order to the District Judge, Surat, also.

9. In the result, this Special Civil Application is dismissed subject to the aforesaid direction. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-